FILED
APR 16 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 728

In the matter of S. P. BEECHER, Farm Debtor under Section 75 of the Bankruptcy Act.

No. B-7848

S. P. BEECHER, Farm Debtor, *Petitioner*,

vs.

LEAVENWORTH STATE BANK, a corporation; FEDERAL LAND BANK, a corporation; HOMER SMITHSON, as Trustee and individually; JOHN McCOY, as a director of the Leavenworth State Bank and individually; LYLE TIMPE, individually; BEN. MAXWELL, individually; LEAVENWORTH FRUIT CO., a Cooperative Co.; EAGLE TRANSFER AND STORAGE COMPANY, a corporation, *Respondents*.

PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

S. P. BEECHER, *Petitioner*,
Cashmere, Washington.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

TABLE OF CONTENTS

Page

Opinions Below 1-10

Jurisdiction 11-12

Questions Presented 13-14

Statutes Involved in Appendix 1a-14a

Chronological Statement of the Case 14-25

Reasons for Granting the Writ 25-26

Argument 26-46

Conclusion 46-47

Appendix A:

Bankruptcy Act, Section 4 a farmer cannot be adjudicated a involuntary Bankrupt 1a
Section 44. An attorney shall not be disqualified to act 1a
Sec. 57. Proof and allowance of claims ..... 1a and 2a
Sec. 62(d) Attorneys Trustees seeking compensation shall file affidavits 2a
Sec. 63. Debts which may be proved 2a
Sec. 64. Debts which have priority ..... 2a and 3a
Sec. 69. When a petition is filed to have a person adjudged a bankrupt a bond shall also be filed .. 3a
Sec. 75(s) 3a, 4a, 5a, 6a
Sec. 75(q) 6a

General Orders in Bankruptcy:

12. Duties of Referees 6a
21. Proofs of Claims 7a
37. General Provisions 7a
50. Proceedings under Sec. 75 of the Act 8a
10. Indemnity for Expenses 8a

28 U.S.C. Judiciary and Judicial Procedure

Sec. 959. Trustees and Receivers Suable Management; State Laws 9a
Sec. 1652. State Laws as Rules of Decision 9a
Sec. 1655. Lien enforcement; Absent defendants 9a and 10a

Page

Rules of Civil Procedure:

Rule 6. Time 10a
Rule 65. Injunctions 11a

Remington's Revised Code of the State of Washington:

Sec. 464. Vacation and modification of judgments 11a
Sec. 604. Possession during Period of Redemption 11a
Sec. 603. Confirmation 11a
Sec. 725. Bond for Injunction 12a
Sec. 804. Mortgagee Cannot Maintain Action For Possession 12a
Sec. 3779. Fruit crops cannot be mortgaged prior 30 day of November each year..... 12a
Sec. 810. Forcible Entry Defined 12a
Sec. 811. Forcible Detainer Defined .....12a and 13a

Rules of the District Court Eastern District of Washington:

Rule 13. Findings of Fact and Conclusions of Law 13a
Rule 14. Notice Must be Given of Settlement of Order .....13a and 14a

Appendix B:

Clerks Certified Cash Record.....16a, 17a
The Court Finds All Personal Property Exempt ... 18a
Chattel Mortgage to Katherine C. Parker ..18a, 19a, 20a
Release of Chattel Mortgage by A. C. Hinton ..20a, 21a
Amended Petition under Subdivision (s) of Sec. 75, Schedule B-2 .....21a, 22a, 23a
Trustees Quit Claim Deed to John McCoy a Director of the Leavenworth State Bank. 23a, 24a, 25a
Excerpts from Appellees Petition to the Supreme Court for Certiorari, May 15, 1846, October Term 1945 No. 1229 .....26a, 27a
Order of Reference to Daniel S. Evans, Conciliation Commissioner, February 15, 1943, for "all further Proceedings." 28a
Order denying Reference to Daniel S. Evans for hearing April 30, 1943. ..... 28a

Page

Excerpts from Proceedings in the District Court Certified by Clerk 29a
Beecher Pleads for funds, which were Withheld From Him to Liquidate his Debts. .....
The Secured Creditors Agree That these funds are Available to Liquidate his Indebtedness.....30a
Excerpts from Proceeding December 12, 1947, that their interest is Limited to the Appraised Value of their security. 31a
The District Court refuses to entertain any matters relating to the "Validity and Amount" of the Leavenworth State Bank Claim. 31a
Excerpts From the Statement of Facts in the State Court Proceedings by Robert B. Field, President of the Leavenworth State Bank. 32a, 33a
Order authorizing the United States Marshal to place Homer Smithson in possession of real and exempt property 33a, 34a
Marshals return that he broke padlocks and placed Homer in Possession of Exempt property....34a, 35a
Various petitions of Petitioner DENIED.....35a, 36a
Special Appearance of Farm Debtor Requesting Business and Legal Papers. 37a
Order Denying "Special Appearance by Farm Debtor Requesting Business and Legal Papers." 38a
Order Extending Time to File Petitioners Petition for Writ of Certiorari, dated January 2, 1952, signed by William O. Douglas, Associate Justice, U. S. Supreme Court 39a

TABLE OF CITATIONS

CASES:

Borchard v. Cal. Bank, 310 U.S. 311 .....33, 43
Compton v. Jessup, 167 U.S. 1 44
Denver & Rio Grande R.R., 191 U.S. 34 35
Eker v. Western Pacific R. Corp., 318 U.S. 448..... 39
Erie R.R. v. Thompkins, 304 U.S. 64 37
Freedmans Savings Bank v. Shepherd, 127 U.S. 494 37
Ford Motor Co. v. Labor Relations Board, 305 U.S. 374 40
Grant v. Phoenix Life Ins. Co., 121 U.S. 105 37

Page

Gardner v. New Jersey, 329 U.S. 573 37
Gardner Gwinn et al., 170 Wash. 463 37
Hamilton Brown Shoe Co. v. Wolf Bros., 240 U.S. 251 34
Heiser v. Woodruff, 327 U.S. 725 23
Hobbs Tie and Timber Co., 283 U.S. 734 39
Huddleston v. Dwyer, 322 U.S. 232 37
John Hancock v. Bartels, 308 U.S. 180 .....33, 43
In re Judith Gap, 5 Fed. (2) 307..... 45
In re Yungbluth, 220 Fed. 210 29
Keller v. Potomac Electric Co., 261 U.S. 280..... 35
Lockwood v. Exchange Bank, 190 U.S. 294 29
Lutcher & Moore, v. Knight, 217 U.S. 257.....35, 36
Messenger v. Anderson, 225 U.S. 436 35
Panama R.R. Co. v. Napier Shipping Co., 166 U.S. 160 35
Pepper v. Litton, 308 U.S. 295 23
Straton v. New, 286 U.S. 318 39
Simons v. Grier Bros., 258 U.S. 82 35
Sandusky v. 1st. National Bank, 23 L. Ed. 155..... 36
Teal v. Walker, 111 U.S. 242 .....37, 38
U. S. v. U. S. Smelting Co., 338 U.S. 186 39
Valley v. Northern Fire Ins. Co., 254 U.S. 348..... 44
Whitney v. Weiman, 198 U.S. 539 39
Wright v. Vinton Branch, 300 U.S. 440 .....33, 40
Wright v. Union Central, 311 U.S. 273 43
Wiswall v. Campbell, 93 U.S. 347 35

RULES AND STATUTES:

Bankruptcy Act:

Section 23 28
Section 70 28-29

28 U.S.C.A., Sec. 1915 40

Rules of Civil Procedure:

73(E) 46
75(D) 45

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No.

In the matter of S. P. BEECHER, Farm Debtor under Section 75 of the Bankruptcy Act.

No. B-7848

S. P. BEECHER, Farm Debtor, *Petitioner*,

vs.

LEAVENWORTH STATE BANK, a corporation; FEDERAL LAND BANK, a corporation; HOMER SMITHSON, as Trustee and individually; JOHN McCOY, as a director of the Leavenworth State Bank and individually; LYLE TIMPE, individually; BEN. MAXWELL, individually; LEAVENWORTH FRUIT CO., a Cooperative Co.; EAGLE TRANSFER AND STORAGE COMPANY, a corporation, *Respondents*.

PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable the Justices of the Supreme Court of the United States:

The undersigned prays that a writ of certiorari may issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered October 11, 1954, in the above entitled case, docketed as No. 13,693:

OPINIONS BELOW

The Opinion of the Court below is set out in the Clerk's certified Transcript of Record in 13,693 at page 137, and is reported 217 Fed.(2) 304, and is here set out in full:

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

S. P. BEECHER,
Appellant,
vs.
HOMER SMITHSON, Trustee,
Appellee.

No. 13,693

Oct. 11, 1954

Upon Appeal from the United States District Court
for the Eastern District of Washington
Northern Division

Before: ORR, FEE and CHAMBERS, Circuit Judges

PER CURIAM:

This appeal is one of a long series urged by a farmer-debtor whose real property has been administered for a number of years under §75(s) of the Bankruptcy Act. Appellant has through all these proceedings acted as his own counsel. The courts, including this, have been more than conscientious in dealing with him, and because of the situation have probably extended him favors beyond his technical rights. Appellant is not a lawyer and has been inclined to insist that his rights are bounded only by his desires.

There has been a motion to dismiss this appeal because Beecher did not think it necessary to file an appeal bond as security for costs as required by the Federal Rules of Civil Procedure §73(c). See Coursey vs. International Harvester Co., 10 Cir., 109 F.2d 774, 777; In re Braker, 6 Cir., 127 F.2d 652; General Orders Bankruptcy No. 36. This defect was not cured by sending at a later date a personal check to the Clerk of this Court "under protest" for costs. The rules cannot be improvised by the litigant. Further, Beecher did not file timely a designation of the record. This motion

to dismiss was continued until the appeal was heard. It is now granted.

However, in view of the situation, all matters urged upon this Court have been examined and no merit has been found in any. The findings, conclusions and order of the trial court were correct. The patience and scrupulous care of this Court in dealing with this litigant are exemplary.[1]

---

[1] Beecher vs. Federal Land Bank of Spokane, 9 Cir., 143 F.2d 580; Id., 9 Cir., 146 F.2d 934 (2 cases); Id., 9 Cir., 146 F.2d 940; Id., 9 Cir., 146 F.2d 1000; Id., 9 Cir., 153 F.2d 982, certiorari denied 328 U.S. 869, 66 S.Ct. 1376, 90 L.Ed. 1369 and 328 U.S. 871, 66 S.Ct. 1376, 90 L.Ed. 1641, rehearing denied 329 U.S. 822, 67 S.Ct. 34, 91 L.Ed. 699; Id., 9 Cir., 153 F.2d 987, certiorari denied 328 U.S. 871, 66 S.Ct. 1364, 90 L.Ed. 1641, rehearing denied 329 U.S. 819, 67 S.Ct. 28, 91 L.Ed. 697; Beecher vs. Leavenworth State Bank, 9 Cir., 156 F.2d 220; Id., 9 Cir., 160 F.2d 294; Id., 9 Cir., 160 F.2d 296; Beecher vs. Federal Land Bank of Spokane, 9 Cir., 166 F.2d 85; Beecher vs. Leavenworth State Bank, 9 Cir., 184 F.2d 498; Id., 9 Cir., 184 F.2d 502; Id., 9 Cir., 184 F.2d 504; Beecher vs. United States, 9 Cir., 184 F.2d 506; Beecher vs. Leavenworth State Bank, 9 Cir., 187 F.2d 448; In the matter of Beecher, 9 Cir., 187 F.2d 858 (2 cases); Beecher vs. Leavenworth State Bank, 9 Cir., 187 F.2d 858; Id., 9 Cir., 187 F.2d 859; In re Beecher, 9 Cir., 189 F.2d 604; In re Beecher, 9 Cir., 189 F.2d 604-5; Beecher vs. Leavenworth State Bank, 9 Cir., 189 F.2d 605; Beecher vs. Leavenworth State Bank, 9 Cir., 189 F.2d 606; Beecher vs. Leavenworth State Bank, 9 Cir., 189 F.2d 607; Id., 9 Cir., 191 F.2d 812; Id., 9 Cir., 192 F.2d 10, certiorari denied, 343 U.S. 953, 72 S.Ct. 1048, 96 L.Ed. 1354; Id., 344 U.S. 886, 73 S.Ct. 187, 97 L.Ed. 686; Beecher vs. Smithson, 9 Cir., 205 F.2d 113; Beecher vs. Leavenworth State Bank, 9 Cir., 209 F.2d 20; Id., 9 Cir., 211 F.2d 158, certiorari denied 347 U.S. 949, 74 S.Ct. 649, 98 L.Ed. 543, rehearing denied 347 U.S. 964, 74 S.Ct. 712, 98 L.Ed. 581.

(Endorsed:) Per Curiam Opinion. Filed Oct. 11, 1954. Paul P. O. Brien, Clerk.

The injunction issued by the District Court of the Eastern District of Washington, Northern Division, on December 4, 1952, is not reported, but is found in the printed record in 13,693 proceedings, at pp. 66-76.

The Court of Appeals for the Ninth Circuit Order denying the complete record was entered February 2, 1955, and is not as yet been reported, but is attached to Tr. at p. 144 and is set out in full in this petition:

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

S. P. BEECHER,
Appellant,
vs.
HOMER SMITHSON, Trustee,
Appellee.

No. 13,693

Feb. 2, 1955

Before: DENMAN, Chief Judge, and BONE and POPE, Circuit Judges

Per Curiam:

Beecher, seeking a writ of certiorari from the Supreme Court of the United States in this case, attempts to designate to the Clerk for his record for the Supreme Court all the records, briefs and exhibits in his scores of appeals in this bankruptcy proceeding. The Clerk seeks our instructions on Beecher's fourth attempt for such an absurd procedure.

The Clerk is instructed to ignore Beecher's attempted designation and to prepare a record containing only matters pertinent to his seeking certiorari in this case number 13,693.

WILLIAM DENMAN
Chief Judge
HOMER T. BONE
Circuit Judge
WALTER L. POPE
Circuit Judge

(Endorsed:) Per Curiam Opinion. Filed Feb. 2, 1955.
Paul P. O'Brien, Clerk.

The Court of Appeals dismissing appeal in No. 13,693 is found in Clerk's certified record 13,693 at page 138:

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

S. P. BEECHER,
Appellant,
vs.
HOMER SMITHSON, Trustee,
Appellee.
No. 13,693

JUDGMENT

Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Eastern District of Washington, Northern Division, and upon motion of appellee for dismissal of appeal herein, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the motion to dismiss be, and hereby is granted, and that the appeal in this cause be, and hereby is, dismissed.

(Endorsed:) Judgment. Filed and entered October 11 1954.

The opinion of the Court below of December 24, 1953, which the lower Court ordered be made part of the record in 13,693, 13,937, 14,020, 14,028, is herein set out:

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

S. P. BEECHER, *Appellant* vs.	Nos. 13,693, 13,937, 14,020, 14,021, 14,022, 14,023
LEAVENWORTH STATE BANK, FEDERAL LAND BANK OF SPOKANE, and HOMER SMITHSON, Trustee, *Appellees.*	14,024, 14,025, 14,026, 14,027, 14,028 Dec. 24, 1953

Before: DENMAN, Chief Judge, and STEPHENS and ORR, Circuit Judges.

DENMAN, Chief Judge:

Beecher is seeking a ruling by this court on that which he terms a "jurisdictional point of law in section 75(s) proceedings" which requires that all proceedings subsequent to an alleged tender of redemption be set aside as beyond the jurisdiction of the court.

Although all but one of the appeals (No. 13,693) in which Beecher seeks this ruling have been dismissed,[1] we shall consider the question at this point because of its importance to the protracted Beecher litigation.[2]

---

[1] The issuance of the mandate having been stayed until January 14, 1954, these causes are still before this court.

[2] For a more complete history of the extraordinary and in large part unwarranted prolongation of this litigation, see Beecher v. Federal Land Bank, 143 F.2d 580; Same v. Same, 146 F.2d 934 (2 cases); Same v. Same, 146 F.2d 940; Same v. Same, 146 F.2d 1000; Same v. Same, 153 F.2d 982, cert. den., 328 U.S. 869, 871, 329 U.S. 822; Same v. Same, 153 F.2d 987, cert. den., 328 U.S. 871, 329 U.S. 819; Same v. Leavenworth State Bank, 156 F.2d 220; Same v. Same, 160 F.2d 294; Same v. Same, 160 F.2d 296; Same v. Federal Land Bank, 166 F.2d 85; Same v. Leavenworth State Bank, 184 F.2d 498; Same v. Same, 184 F.2d 502; Same v. Same, 184 F.2d 504; Same v. United States, 184 F.2d 506; Same v. Leavenworth State Bank, 187 F.2d 449; In the matter of S. P. Beecher, 187

In 1939, Beecher, a farmer, found himself in financial difficulties and instituted proceedings under section 75(a-r) of the Bankruptcy Act.[3] Unable to secure the assent of his creditors to an offer of composition, Beecher filed an amended petition under section 75(s) of the Act and was adjudicated a bankrupt farmer-debtor on February 1, 1940. He remained in possession of his property under a stay and rental order later declared void by this court[4] until July, 1943, when, because of his neglect of the property, a receiver was put in possession of the orchard property involved.[5] The receiver's possession was terminated and appellant was restored to possession on May 6, 1946. On August 16, 1953, the Conciliation Commissioner, on Beecher's motion, appraised the property at $9,170.00 for purposes of redemption. Beecher alleges that on August 4, 1947, he deposited $9,170.00 into court and claimed that he had redeemed the property.[6]

On November 30, 1951, upon request of the secured creditors, the district court re-appraised the property involved at a total value of $21,550.00 and directed that redemption could be effected by Beecher by the payment into court of this sum. Among the findings of fact and conclusions of law supporting this order

F.2d 858; Beecher v. Leavenworth State Bank, 187 F.2d 858; Same v. Same, 187 F.2d 859; In re Beecher, 189 F.2d 604 (two cases); Beecher v. Leavenworth State Bank, 189 F.2d 605; Same v. Same, 189 F.2d 606; Same v. Same, 189 F.2d 607; Same v. Same, 191 F.2d 812; Same v. Same, 192 F.2d 10, cert. den., 343 U.S. 953, 344 U.S. 866; In re Beecher, 50 F. Supp. 530 (E.D. Wash.). There have also been numerous unreported orders in these cases. In addition, the following appeals have been disposed of without opinion or are still pending: Beecher v. Leavenworth State Bank, No. 13,316-13,326; Same v. Same, No. 13,674; Same v. Smithson, No. 13,693; Same v. Same, 13,937; Same v. Federal Land Bank, Nos. 14,020-14,028.

[3] 11 U.S.C. § 203 (a-r).

[4] Beecher v. Federal Land Bank, 153 F.2d 982, 984 (Cir. 9).

[5] The circumstances necessitating the appointment of a receiver are described in Beecher v. Federal Land Bank, 146 F.2d 934, 938 (Cir. 9).

[6] Beecher so alleges. Because the record is not in a condition to permit verification of this allegation without extended research, the allegation will be accepted as true for the purposes of this opinion.

was one that there were no funds in the registry of the court available to Beecher for the purposes of redemption. No payment pursuant to this order was made by Beecher during the ninety-day period or at any other time. A tender of redemption was made on February 27, 1952, by which Beecher sought to redeem the property with the $9,170.00 plus the moneys thereafter acquired during the years he did not have possession. This tender was rejected.

On April 13, 1953, on petition of the secured creditors and after notice and hearing were afforded Beecher, the district court entered an order appointing a trustee to take over the property and directing the sale thereof.[7] Beecher's contention is that after the deposit into court of the $9,170.00, the district court was without jurisdiction to take any further action in the case other than to re-appraise the property at the request of the secured creditors,[8] and that the court therefore had no power to appoint a trustee or to order a sale.

Inasmuch as the district court did re-appraise the property at the request of the secured creditors and arrived at a value greater than the amount Beecher had deposited, Beecher's contention has merit only if there are funds in the registry of the court which were available to him. The findings of fact and conclusions of law of the order of November 30, 1951, foreclose any such contention. It does not appear that Beecher appealed from that order and that conclusion of law is now the law of the case. Furthermore, this contention was presented to this court in Beecher's motion to this court for a stay of the sale pending determination of the appeal in No. 13,937, and was rejected. No certiorari was sought on this decision.

There is another reason why Beecher's contention that the district court had no jurisdiction to enter the order appointing a trustee and directing the sale of the property must be rejected. The last sentence of section 75(s)(3) states:

---

[7] Pursuant to the second proviso of § 75(s) (3).

[8] This contention is based upon the first proviso of § 75(s) (3) and upon the language in the case of Wright v. Vinton Branch Bank, 300 U.S. 440.

> "If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this title."

The record is replete with instances in which Beecher has failed to comply with orders of the court,[9] once to such an extent that the district judge found it necessary to jail him for contempt.[10] Furthermore, the record shows that Beecher has not been able to rehabilitate himself during the fourteen-year period of this litigation.

Thus, the order of the court was within its power; and, inasmuch as the other orders complained of were ancillary to the order appointing the trustee and directing the sale, they, too, were within the power of the court.

We do not here decide whether the appointment of the trustee and the order of sale were proper. We hold only that the court below did not lose jurisdiction to appoint a trustee and to order a sale of the property when Beecher deposited the $9,170.00 into the registry of the court. The question of the propriety of the appointment of the trustee is a matter for determination when Appeal No. 13,693 is heard on the merits.

It is ordered that a copy of this opinion be made a part of the record in each of the following appeals: Nos. 13,693, 13,937, 14,020, 14,021, 14,022, 14,023, 14,024, 14,025, 14,026, 14,027, 14,028.

(Endorsed:) Opinion. Filed Dec. 24, 1953. Paul P. O'Brien Clerk.

---

[9] See Beecher v. Federal Land Bank, 146 F.2d 934, 937-939 (Cir. 9); Beecher v. Leavenworth State Bank, 160 F.2d 294, 295 (Cir. 9); Beecher v. Leavenworth State Bank, 184 F.2d 504 (Cir. 9); In re Beecher, 50 F. Supp. 530, 532-533 (E.D., Wash.).

[10] See Beecher v. Leavenworth State Bank, 184 F.2d 504 (Cir. 9).

To these cases set out in the footnote should be added: *Federal Land Bank of Spokane; Leavenworth State Bank of Leavenworth, Washington* v. *Beecher,* filed in the Supreme Court May 15, 1946, under No. 1229, October Term, 1945; *Leavenworth State Bank* v. *Beecher,* No. 28,011, Supreme Court State of Washington reported 108 Pac.(2) 345.

Attached hereto and printed in full is an Order of the District Court of the Eastern District of Washington dated March 3, 1955, denying Petitioner records on the grounds that appeals had "finally been disposed of":

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

In the matter of S. P. BEECHER, Farm Debtor.	No. B-7848 ORDER DENYING DELIVERY OF TRANSCRIPT

The above named farm debtor, S. P. Beecher, has presented to this Court petition for additional records on petition for certiorari to the Supreme Court of the United States, which petition came on for hearing before the Court on March 3, 1955, farm debtor appearing in person. It appears that the transcript of record which the farm debtor requests was prepared at government expense at a time when farm debtor was carrying on the above entitled litigation in forma pauperis. The transcript was furnished in connection with appeals from a number of orders of this Court to the Court of Appeals for the Ninth Circuit. Farm debtor at that time refused to accept delivery of a copy of the transcript, although the Clerk endeavored to effect delivery thereof to him. The appeals for which said transcript were prepared have long since been finally disposed of and are not now pending either in the Court of Appeals for the Ninth Circuit, or on petition for writ of certiorari to the Supreme Court of the United States.

IT IS NOW, THEREFORE ORDERED, that farm debtor's petition for delivery to him of said transcript is hereby denied.

Dated this 3rd day of March, 1955.

SAM M. DRIVER
United States District Judge

JURISDICTION

The judgment of the Court of Appeals was entered on October 11, 1954. See Clerks Transcript of Record 13693, p. 137.

Petition for extension of time to file petition for rehearing filed October 27, 1954, and petition granted, found Clerk's Certified Record 13693, pp. 139-40.

Petition for rehearing filed November 10, 1954, p. 140; Order denying Petition for Rehearing was entered November 29, 1954. (Tr. p. 141)

Order of Judge Douglas extending time to file petition for certiorari to April 27, 1955, is as follows:

SUPREME COURT OF THE UNITED STATES

No. , October Term, 1954

S. P. Beecher, *Petitioner,*

vs.

Leavenworth State Bank, Et Al.

(Court of Appeals No. 13693)

Order Extending Time to File Petition for Writ of Certiorari

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 27, 1955.

(SGD) Wm. O. Douglas
Associate Justice of the Supreme Court of the United States.

Dated this 3rd day of March. 1955.

The jurisdiction of this Court is invoked under Section 24 of the Bankruptcy Act (U.S.C. Section 47).

"The Circuit Courts of Appeals of the United States—in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction from the several courts of bankruptcy in THEIR RESPECTIVE jurisdictions in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, of law and matters of fact; Provided, however, That the jurisdiction upon appeal from a verdict rendered by a jury, shall extend to matters of law only; Provided further, That from any order, decree, or judgment involves less than $500.00, an appeal therefrom may be taken only upon allowance of the appellate Court.

c The Supreme Court of the United States is hereby invested with jurisdiction to review judgments, decrees, and orders of the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia in proceedings under this Act in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted.

The question has been raised in the lower Court in regard to Petitioners Designation of the "entire record"

Respondents raised objections and the lower Court sustained them. See: Clerks certified Tr. of Record in 1.3693, Page 144 in which the Court of Appeals refers to it as "*absurd*"

Petitioner answers this statement in the petition by numerous decisions of this Court in regard to the scope and jurisdiction to review this long extended bankruptcy proceedings.

QUESTIONS PRESENTED

1. After the secured creditors have stated that there is enough money available to liquidate their claims; after the Commissioner has found that all personal property were exemptions of Petitioner, subject only to a chattel mortgage to Katherine C. Parker; after the District Judge has approved the said mortgage; and after Petitioner has paid this mortgage, and filed in the District Court a copy of the release, Can a District Court on two separate occasions authorize a sale of these exemptions and real property and confirm the sale thereof?

2. Does a judge of a Bankruptcy Court have jurisdiction, after reference to a referee "*for all further proceedings herein*" to entertain and pass upon original matters, presented by a litigant, without reference to the Referee.

3. Does a judge of a bankruptcy court have jurisdiction to issue restraining orders, depriving the bankrupt of funds and later, depriving of bankrupt of his real and exempt property, asked for by a secured creditor, without a bond as required by law for costs and damages, and is that creditor immune from prosecution in a non-bankruptcy court for damages?

4. Has a judge of a court of bankruptcy jurisdiction, on his own motion, the secured creditors refusing to participate in the proceedings, the right to demand that Petitioner turn over to the Court funds that secured creditors had specifically agreed belonged to Petitioner to liquidate his debts?

5. Can a Bankruptcy Court, while a restraining order is in force from the Supreme Court, appoint a trustee, order the Petitioner dispossessed and evicted from his home, order the United States Marshal to break padlocks on buildings in which his exemptions are stored, and even deny Petitioner the right to go upon the property?

6. Can a Bankruptcy Court refuse to consider or rule upon the applicable State Statutes?

7. When a litigant receives all he has asked for, is he limited in his recovery to that extent?

8. Is the jurisdiction of a Bankruptcy Court unlimited or is it limited by statute; Can he, over the protests of the secured creditors that they "were not interested and were not appearing", deprive the Petitioner of $8,000.00 and other funds which these secured creditors had previously stated were available for the liquidation of his debts?

9. Can a Bankruptcy Court authorize the payment of attorneys, receivers, trustees, and administration costs from the income from the property, or must they, under the provisions of Section 75(s) of the Bankruptcy Act, be charged as an administration expense against the estate?

10. Under the Bankruptcy Act does the estate consist of the estate as of the date of bankruptcy and is the recovery of mortgage holders limited to their security at that time?

STATUTES INVOLVED

The Statutes involved being lengthy are set out in the Appendix as Appendix A.

CHRONOLOGICAL STATEMENT OF THE CASE

Petitioner filed a petition under Section 75 of the Bankruptcy Act, *July 28, 1939*, seeking composition of his debts (Tr. 10391, Vol. 1, p. 9), docketed as B-7848.

On *February 1, 1940*, Petitioner, as required by the Act, filed his Amended Petition, under subsection (s). (Tr. 10391, Vol. 1, pp. 39-56)

Petitioner was a man of large interests over and above his orchard activities, which were without encumbrance.

Robert B. Field was President of the Leavenworth State Bank, of which he held over 50 per cent of the stock. He was also Vice-President of the Citizens State Bank of Omak, which he also controlled.

The said Robert B. Field had long coveted Petitioner's orchard home, which was outstanding. See newspaper clipping photographs attached to 492 Misc., October Term 1953 (see printed record Court of Appeals in 13,693 at pages 33-4) while in possession of Homer Smithson.

The said Leavenworth State Bank had a mortgage upon this fine home and orchard property, upon which the said Robert B. Field under oath stated was limited to one $5,000.00 note. See Appendix pp. 32-3, 12084—G. as an Exhibit.

The said Leavenworth State Bank had submitted several claims, to wit: Sept. 11, 1939, Tr. 10391, Vol. 3, p. 457—60; April 12, 1940, Tr. 10391, Vol. 3, p. 499—501; March 18, 1948, Tr. 12216, Vol. 1, p. 37—41, what purports to be a certified copy of the mortgage with reference to a note for $15,000.00; but the note is not included, the mortgage specifies no interest. The last one in *1948* in which was submitted a certified copy of his mortgage, but does not submit the note referred to or even a copy of it. See Tr. 12216, Vol. 1, pp. 37-41.

The Citizens State Bank of Omak held a note for approximately $1,100.00, past due, of which they held collateral for over $400.00. Mr. Field had stipulated with Petitioner that this note would be extended until the 1938 crop had been disposed of (the crop year ends on June 1st of each year).

On *March 31, 1938*, without notice to Petitioner, the said Robert B. Field, through his Citizens State Bank of Omak, filed attachments on all property Petitioner owned over and

above the property upon which he had a real estate mortgage. See Tr. 10391, Vol. 1, pp. 127-155. To void these attachments Petitioner on *July 28, 1939* filed under Section 75 of the Bankruptcy Act.

Petitioner had large interests besides the orchard mortgaged, which had no encumbrances, including large and valuable water rights, dams, flumes, and ditches in the high Cascades at the head of Snow Creek.

The United States Government was attempting to buy them in connection with the Coulee Dam project, and but for the obstructive opposition of the said Robert B. Field, would have realized enough to liquidate the indebtedness to the Leavenworth State Bank and the Federal Land Bank.

Approximately four times during 1940 Robert B. Field under various pretexts tried to dispossess Petitioner.

On *February 1, 1940,* Petitioner filed under Section 75(s) of the Bankruptcy Act and on the same day was adjudicated.

Under Section 75(s) of the Bankruptcy Act. See, Tr. 10391, Vol. 1, p. 57.

Sept. 11, 1939, the Leavenworth Bank submitted proof of claim on allegations. Tr. 10391, Vol. 3, p. 457.

March 30, 1940, Petitioner filed petition for appraisal. See Tr. 10391, Vol. 3, p. 479.

April 12, 1940, the Leavenworth State Bank filed another claim on allegations. Tr. 10391, Vol. 3, p. 499.

April 30, 1940, no hearing was had on the claim of the Leavenworth State Bank and continued until further notice. Tr. 12084, Vol. 1418-1421. The claim of the Leavenworth

State Bank again came on for hearing *September 11, 1946* and was again continued. See Tr. 12084, Vol. 7, pp. 1422-1436.

1942. Petitioner had a fine crop, prices were excellent (Pearl Harbor was the year previous). Prospects were that that crop would liquidate the entire indebtedness. Help was hard to get. The Army took Petitioner's truck and tractor driver—no foreman, no one to drive tractor or truck except Petitioner, fruit harvest September, October and early November. The secured creditors forced Petitioner to leave his orchard work three times to attend Court in Spokane, 200 miles distant, several days lost from his harvest, besides much time lost in making out reports. All common creditors petitioned the Court to postpone hearings until after the harvest. See Tr. 10391, Vol. 2, pp. 303-4, here set out.

Filed in the U. S. District Court, Sept. 29, 1942.

"PETITION FOR CONTINUANCE OF HEARING CALLED FOR OCTOBER 8TH, 1942

We the undersigned creditors listed in the Debtors Schedules in the above entitled matter, and having received notice of a hearing set for October 8th, 1942.

Respectfully want to present the following facts for the consideration of the Court.

The next 60 days is a very critical time for the Wenatchee Valley. A large crop of apples to come off the trees and into the warehouses in a limited time. With the acute shortage of help to harvest the crop, every effort of every man in the valley must be concentrated in an effort to get this crop under cover, to prevent a very serious loss.

WHEREFORE the undersigned creditors respectfully petition that, for the best interest of the creditors and for the Farm Debtor, that no hearings be held until after the 1942 crop is under cover, and that the Farm

Debtor be allowed to devote his entire time in an attempt to save his crop.

Leavenworth Fruit & Cold Storage Co.
By R. H. PARSONS

J. H. AUVIL, *Treas., Chelan County*

Wenatchee Farmers Exchange
THOMAS REED, *Mgr.*

Columbia Okanogan Nursey Co.
By W. D. PLOUGHT, *Mgr.*

Uecker Bros.
By E. J. UECKER

P.S.P. & L. Co.
By W. B. YOUNG, *Asst. Treas.*

Katherine C. Parker
By C. F. RIDDELL, *Her Atty.*

HARVEY DAVIS

Tandy Ditch Co.
By A. B. CAMPBELL, *President*

Gibbs Ditch Co.
By HENRY JESKE, *President*

Tr. 10391, Vol. 2, p. 307. Petition *Denied.*

All common creditors signed the petition and if continuance had been granted they could have been paid in full. See Tr. 10391, Vol. 2, p. 398.

April 30, 1943. Petition to judge for reference to Conciliation Commissioner, and reports loss of $10,000. (Tr. 10391, Vol. 2, pp. 303-304)

For further report on losses for 1942, see Tr. 10391, Vol. 3, pp. 440-452.

April 1, 1943, it appeared that in spite of the serious losses by refusal to allow Petitioner continuance to harvest the crop. There would be a credit balance of about $6,000.00.

April 12, 1943. This secured creditor Robert B. Field, President of the Leavenworth State Bank, on ex parte application to the Judge (an Order of reference "for all further proceedings herein" had been entered by the Judge), to Daniel E. Evans, Conciliation Commissioner, and without the tender of a bond for costs and damages, secured a restraining order, restraining all funds to the credit of Petitioner, leaving the Petitioner helpless to properly take care of his orchard.

Petitioner appealed to the Conciliation Commissioner for assistance, as the law provides. He stated under the circumstances he was helpless, and suggested appealing to the higher Court, the Court of Appeals in San Francisco. Petitioner went to San Francisco, engaged an attorney and appealed to that Court to release funds. Unable to get any relief there, he returned home to harvest a crop of cherries that would provide funds for the care of the orchard. Arriving home he had a crew picking cherries, when a U. S. Marshal appeared and placed Harold D. Couch in possession, again without filing a bond for costs and damages, and again making his application direct to the Judge and not to the Conciliation Commission. This receiver, Harold D. Couch, on petition of Robert B. Field, was placed in possession of Farm Debtor's personals which were exemptions set aside to Petitioner.

It is submitted that even though no bond was filed by the Leavenworth State Bank, they are still liable for such unlawful and malicious actions.

The Petition was verified as follows: "is true as he verily believes" and the terms of application is " * * * that a receiver be appointed forthwith by this Court for *all the property of said bankrupt, to protect and preserve the same for the benefit of all parties interested herein.*" See Tr. 10789, p. 5.

This receiver took over Petitioner's exemptions and abused and destroyed much of these exemptions and the Court refused Court action against the said receiver.

He remained in possession from July 9, 1943 until May 6, 1946.

These were the extremely profitable war years, the said receiver paying an income tax over $11,000.00.

On *May 6, 1946*, the Court of Appeals placed Petitioner back in possession but made no provision for damages for the unlawful and maliciously inspired actions by the said Robert B. Field, President of the Leavenworth State Bank.

On *May 7, 1947*, there were accumulated funds of over $35,000.00, available to liquidated claims which were refused your Petitioner unless the Court release Petitioner. Petitioner pleaded with the Court for their release; the Court refused the release. See Tr. 12084, Vol. 1, p. 47, Appendix p. 29a. The same day in open Court the secured creditors agreed that this money is available for redemption and would leave money over. See Tr. 12084, Vol. 1, p. 126. Appendix p. 30a.

On *August 4, 1947*, believing that the creditors were acting in good faith, Petitioner deposited in Court for redemption $9,170.00. See Tr. 12084, Vol. 1, pp. 215-220, also Court docket p. 16a Appendix, date August 4, 1947.

This deposit of the appraised value is only a first step in redemption under the Act; either party can ask for a reappraisal.

The creditors asked for a reappraisal, and it was again not until *November 30, 1951*, that a valid reappraisal was had, and the value was increased from $9,170 to $25,550.00, leaving an additional sum which Petitioner would have to pay to redeem his property of $16,380.00.

In the meantime and on *December 12, 1947*, the secured creditors again confirmed the statements heretofore made

that they were dependent for the liquidation of their claims *on the redemption value or* the sale of their security. See Tr. 12084, Vol. 3, pp. 740-742. Appendix p. 31a.

Prior to the coming in of the reappraisal on November 30, 1951, and on *June 16, 1951* and *June 20, 1951,* the secured creditors protested that they were not interested and were not appearing. The District Court deprived Petitioner of $17,563.17, or over $1,000.00 more than enough to redeem in full at the reappraised value. See Clerk's certified docket hereto attached as pp. 16a and 17a.

See entries of *June 16, 1951* and *June 6, 1952* of $4,328.74, $2,500.00, $2,734.43. Geo. Fasken—(Crop Proceeds) $8,000.00. The sum of $2,734.43, was an open credit on the books of the Fruit Company with which Petitioner had done business, the balance was in the form of certified checks. The $8,000.00 was in Petitioner's possession, and which Petitioner refused to endorse and turn over to the Court.

On hearing in Court on *June 20, 1951,* the whole matter was on appeal to the Court of Appeals, the District Judge and the attorneys for the secured creditors saying they were not interested and were not appearing; ordered the Petitioner to give bond of $1,500.00, to perfect the appeal, within five days, or go to jail.

Petitioner could not secure a surety bond on such short notice, five days. There was a balance of over $11,000.00 in Court. See Appendix, p. 16a June 20, 1951. Petitioner filed a bond designating $1,500.00 of this amount as bond. Without action on this bond tender, by the Court, the Clerk on the fourth day (see Rule 6, Rules of Civil Procedure rule 6), ordered the U. S. Marshal to pick Petitioner up and place him in jail. The U. S. Marshal from Spokane, 200 miles distant, appeared in Cashmere five hours before the expiration of the five days, and over Petitioner's protest that the five days had not expired and that he had filed a bond still unacted upon, took Petitioner into custody.

Over Petitioner's protest that he wanted to get a Spokane attorney, Petitioner was taken to Wenatchee, and delivered to the sheriff, who was instructed in Petitioner's presence, not to let the matter get in the papers. For several days Petitioner was refused stationery to write on, refused the use of a telephone and kept in semi-solitary confinement, abused and mistreated to such an extent that in 18 days he lost 27 pounds, refused food that Petitioner was used to, although Petitioner offered to pay for toast and cereal and eggs, etc. Fingerprinted and picture taken for the rogues' gallery like any depraved criminal.

After several days there was a leak; it got in to the papers; my friends tried to see me; and the way was made difficult.

Elmer McClain, a Frazier Lemke attorney of national reputation, in Frazier Lemke importance, he having appeared in this Court in the Vinton Branch case, tried to see your Petitioner. He stayed around all day and then about 8 P.M. he was allowed to see me for 15 minutes but then only in the presence of the sheriff, his deputy, and his wife—and at that the sheriff did most of the talking.

My friends tried to get a local lawyer—they were all "too busy". I had no money; many times I tried to get funds released or get the Court to authorize a lawyer to represent your Petitioner—always refused.

The Act, Section (q) requires the Conciliation Commissioner to assist the Farmer. See Appendix p. 6a.

Can this happen under the laws of these United States and our Constitution? After 18 days in jail, my friends arranged bail of $1,500.00, and Petitioner was released.

Sixteen years of persecution to satisfy the greed and animosity of this rich banker, Robert B. Field. This Court has had other cases, but none as contumacious as this. The Court recognized the fraudulent character of the proceedings and showed that this United States will not coun-

tenance proceedings fraudulently inspired. See *Pepper* v. *Litton*, 308 U. S. 295; *Heiser* v. *Woodruff*, 327 U. S. 725.

On *November 30, 1951,* the District Court issued an Order fixing the reappraised value for redemption purposes at $25,550.00, and gave no credit for the sum of $9,170 paid into Court for redemption purposes on August 4, 1947 and acknowledged August 7, by both secured creditors. See Tr. 12084, Vol. 1, pp. 218-220. Appellant appealed that Order to the Court of Appeals, who entered it as Nos. 13316-13326.

The Court dismissed the appeals on June 9, 1952, on petition of the secured creditors, although the District Court had invited Petitioner to appeal in forma pauperis, *certifying "that the appeals were substantial and not frivolous."* This is found at Tr. 13316-13326, about page 1670. This record was in this Court but was sent back by request of the lower Court.

On *January 2, 1952,* this Court, by associate Justice Wm. O. Douglas, issued a restraining Order directed to the lower Courts. See Appendix p. 39a.

While that restraining order was in force, and on April 29, 1952, the District Court appointed a trustee to take over the real and personal exemptions *"and operate the same until the further orders of the Court"*. It is submitted that the Bankruptcy Act contains no authority for such action and is further in contempt of the restraining order issued by this Court, and is further void and without jurisdiction in depriving the bankrupt of his exemptions.

It is further contrary to the laws of the State of Washington which gives possession to the farmer until the redemption period has terminated, and until the mortgagee has reduced the farm to his actual possession. See *Lockwood* v. *Exchange Bank*, 190 U. S. 295.

June 9, 1952, the attorney for the Leavenworth State Bank cited Petitioner to appear in San Francisco before the Ninth Circuit. The Petitioner herein locked up his build-

ings and left home to appear in San Francisco on the Ninth. He was taken sick on the way and had to spend several days in bed, so he did not get to San Francisco at all.

When he returned home he found that his home and buildings had been entered, padlocks broken and notice posted on the door of the home, ordering the Petitioner not even to go upon the property. This notice had the name of the Judge typed and apparently had been altered by interlining. See copy attached hereto, Appendix pp. 33a-34a.

The said notice had been apparently typed by the attorney for this secured creditor, Robert B. Field, President of the Leavenworth State Bank, who had noticed the hearing in San Francisco the day previous to the said entry.

The original notice Petitioner found attached to his door is in the files of this Court in Tr. 13693, Vol. 2, p. 105, and would give any observing person suspicion that the said notice had been tampered with. The said unlawful entry and detainer is a criminal offense in the State of Washington. See the Statutes, Appendix, pp. 12a-13a.

As further evidence of this unlawful entry and detainer (see Tr. 14167, at pp. 13-26) where the said Homer Smithson sold the Petitioner's exemptions on August 8, 1953, and again on November 14, 1953 (Tr. 14224 4-9), and further see Tr. 13693, Trustees deed to Homer Smithson at pages 23a-25a, containing the identical description "*50 gals. Hardie Stationary Spray Pump 15 HP Century motor—2 600 gals. concrete tanks,*" the same wording as appears in the exemptions set aside March 17, 1941 (Tr. 10391, Vol. 3, p. 555 and Tr. 10391, Vol. 1, pp. 54-5), and confirmed in 1946 by the Conciliation Commissioner in Tr. 12084, Vol. 2, p. 330, and confirmed by the secured creditors in 1946, in their Petition for Certiorari, filed in this Court May 15, 1946 as No. 1229, October Term 1945, at pages 25, 27 and 28. (Four copies of this petition are in the files of this Court. Excerpts are set out in Appendix, pp. 26a, 27a).

This item is only one of numerous exemptions set aside that have been administered by the District Court and in the decision of *Lockwood* v. *Exchange Bank,* 190 U. S. 294, are *void.*

An accounting would be necessary for a full determination.

In the Clerk's District Court Docket at page 34, attached to the Clerk of the Court of Appeals certified record under date of January 22, 1952, is a petition to redeem by Petitioner. On the same date without calling a hearing thereon, the Court arbitrarily denied the petition; again under date of Feb. 28, 1952, Petitioner filed another petition to redeem, and the docket entry of February 29 is this

> "Order that tender is insufficient, etc. and rejecting tender."

REASONS FOR GRANTING THE WRIT

1. The rulings of the courts below have denied the Petitioner herein "Due Process of Law" as guaranteed by the Constitution of the United States, in that he has been deprived of his liberty and his property arbitrarily and without jurisdiction; constituting Denial of Due Process.

The preservation of our Constitutional privileges is dear to the hearts of every loyal American Citizen.

2. The lower Courts have scrapped and denied the very fundamentals of bankruptcy legislation, that have been the standard for over 100 years. If these decisions are let stand they will confuse our bankruptcy procedure, as it would reverse our Supreme Court in many decisions which have standardized our bankruptcy laws.

It is of general interest to every citizen that the Court proceedings become of record without reversal and clarification.

ARGUMENT

Throughout these entire 16 years of litigation no interested Party to these proceedings has ever made any claim to the income from the property, pending litigation.

On the contrary the secured Creditors have, specifically disclaims any right thereto.

No interested Party to these proceedings has ever requested that Petitioner be evicted from his home, and denied the enjoyment thereof pending litigation.

No interested Party to these proceedings has ever requested that the Farmer Debtor be denied the possession of his exemptions his Family pictures and his keepsakes.

No interested Party in these proceedings have ever requested that Petitioners exemptions be sold at public auction.

No interested Party has ever asked that the Petitioner be denied the use of the income from the property to maintain his orchard, since Petitioner was placed in possession May 6, 1946, by the Court of Appeals who ordered the restrained funds returned to Petitioner where they would be available for orchard maintenance.

No interested Party has ever requested that the income from the property be denied Petitioner for redemption purposes.

See: Tr. 12084, Vol. I, p. 126, Appendix A, hereto p. 30a. (Date May 7, 1947.) See: Tr. 12084, Vol. III, pp. 740-742. Appendix p. 31a dated Dec. 12, 1947. And again See: Creditors Petition for Certiorari, October Term 1945, Filed in this Court, May 15, 1946, No. 1229, at pp. 25, 27, 29, and See Appendix pp. 26a, 27.

Certified Transcript of Record in 14020-14028 Vol. II, pp. 346-7, Court Reporters Transcript of Proceedings June 20, 1951 as follows:

Numerous Petitions to Redeem Arbitrarily Denied Without Hearing

The numerous times Petitioner has petitioned to redeem do not appear in the record transmitted to this Court, but they have been several, designating funds that the creditors agree are funds which are available for redemption purposes. The District Court, without calling a hearing thereon, arbitrarily denied the said petitions. The Transcript in 14020-14028 will substantiate all this.

The Lower Courts Bankruptcy Jurisdiction Is Strictly Limited by Law

and is derived from Section 23 of the Bankruptcy Act (11 U.S.C.A. 46). Sec. 23 (a):

> "The United States District Courts shall have jurisdiction of all controversies at law, and in equity, as distinguished from proceedings under this Act, between receivers and trustees as such and adverse claimants, concerning the property acquired or claimed by the receivers or trustees, in the same manner and to the same extent as though such proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.
>
> (b) Suits by the receiver and the trustee shall be brought or prosecuted only in the courts where the bankrupt might have brought or prosecuted them if proceedings under the Act had not been instituted, unless by consent of defendant, except as provided in Sections 60, 67, and 70 of the Act."

The Federal Courts Have No Jurisdiction Over Exemptions Except to Set Them Aside. Any Creditor Having a Claim Against It Must Pursue Their Claim in a Court That Has Jurisdiction

SEC. 70. TITLE TO PROPERTY.

(a) "The trustee of the estate of a bankrupt and his successor or successors, if any, upon his or their ap-

pointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition in bankruptcy or of the original petition proposing an arrangement or plan under this Act, *except insofar as it is to property which is held to be exempt,* * * *."

The Supreme Court opinion on this question follows, *Lockwood Exchange Bank,* 190 U. S. 294, at page 299. Question certified by U. S. Court of Appeals, 5th Circuit.

"—In other words, it is made as clear as anything can be, that such exempt property constitutes no part of the assets in bankruptcy. The agreement of the bankrupt in any particular case to waive the right to the exemption makes no difference. If the creditor has a claim against it he must prosecute that Claim in a court which has jurisdiction over the property, which the bankruptcy Court has not."

In re Yungbluth, 220 Fed. 110 (9 Cir. 1915):

"The sole question presented here is as to the validity of the charge imposed upon the homestead by the referee and confirmed by the Court, with directions to sell the homestead in the event the $500.00, with interest, was not paid, and out of the proceeds thereof pay the note and interest, and pay to the bankrupt the remaining proceeds of such sale.

To do so the Bankruptcy Court would be administering the homestead property which the Supreme Court in the case of Lockwood Exchange Bank, 190 U. S. 294 distinctly adjudged could not be done."

The Conciliation Commissioner confirmed all personal property as exempt on June 25, 1947, Tr. 12084, Vol. 2, p. 330, Appendix p. 18a.

The District Court on petition therefor by Robert B. Field, President of the Leavenworth State Bank, and without a bond for costs and damages, by Court Order forcibly gave over all this exempt property to the possession of a

receiver, Harold D. Couch, July 3, 1943, in whose possession it remained until May 6, 1946. See Tr. 10789, pp. 2-5 and 7-10.

Again on June 10, 1952, the District Court authorized the United States Marshal to break padlocks and place Homer Smithson, whom the Court had appointed to operate the orchard property until "the further orders of the Court", (entry was made June 10, 1952) in the absence of the Petitioner from home. See copy of this order at Appendix pp. 33a, 34a and 35a.

This personal exempt property was sold by the said "Trustee" on August 8, 1952 (see Certified Record in No. 14167), later vacated and resold on November 14 by the said Trustee on November 14, 1952 (Tr. 14224), and in 1953 the said Homer Smithson issued Quit Claim deeds as to several items of personal exemptions. See Exhibit in Tr. of Record, 13693, and since that time has dissipated and removed the same—all contrary to the provisions of section 70 of the Bankruptcy Act and the opinion of this Court rendered in *Lockwood* v. *Exchange Bank*, 190 U. S. 294.

It will be noted that on May 10, 1952, Petitioner secured a release of the chattel mortgage upon these exemptions, See Clerk's Certified Docket of the District Court attached to certified record transmitted to this Court in 13,693 at page 35, 2nd line from the bottom. Also, see Appendix pages 20a and 21a.

When a District Court Refers to a Referee "For All Further Proceedings Herein" Can He Continue to Hear Original Matters Presented to Him or Are His Actions Void?

The creditor, Robert B. Field, on April 12, 1943 appeared before the District Judge in Spokane 200 miles distant (the Conciliation Commissioner, to whom had been referred the matter "for all further proceedings herein" lived within 20 miles) without the requirement of a bond

for costs and damages, secured an order Ex Parte impounding all funds upon which Petitioner depended for operation expenses and refused Petitioner's application for reference to that Conciliation Commissioner. See: Tr. 10391, Vol. II, p. 357, Appointment of Conciliation Commissioner. Page 361 date of April 1, 1943, Petitioner requests a reference to this newly appointed Commissioner. The petition was denied April 30, 1943. See: Tr. 10391, Vol. II, p. 387.

Then follows, commencing page 369, to Vol. III, p. 417, efforts by Petitioner to get funds released for operating expenses and a reference to the Conciliation Commissioner, who was on the ground and knew orchard practices—all to no avail.

The creditor, the Leavenworth State Bank, presented an improper spray order (pp. 415-416), one that was deadly at this season of the year, April 30, 1943, when the trees were in full bloom, which the Court signed, Petitioner testifying that it was strictly a dormant spray and would have deadly results, the last clause reading:

> " * * * and that in the event of his failure so to do the bankrupt will be in contumacious, intentional and wilful contempt of this Court, and his right to possession of his property shall thereupon immediately cease and terminate."
>
> Done in open Court this 30th day of April, 1943
> Presented by:
> Randall & Danskin and Herman Howe
> Attorneys for Leavenworth State Bank
> By Herman Howe.

The Leavenworth State Bank is acquainted with orchard practices and knew the result of a spray of that kind when the trees were in full bloom. The presentation of such an order was malicious and contumacious, and designed with the idea that Petitioner would refuse to apply it and then they would come in possession. Petitioner did apply and

every blossom was killed, and the trees were so injured that a receiver they later appointed removed ten acres of Petitioner's best orchard. The spray was not necessary, probably not over 25 per cent of the growers put on a dormant spray on account of war conditions.

Without funds restrained by the said Leavenworth State Bank, Petitioner was hard put to do the proper things in the maintenance of the orchard. The Conciliation Commissioner near the orchard said under the circumstances he was helpless and suggested applying to the Court of Appeals in San Francisco. Petitioner went to San Francisco, and was told they had "no original jurisdiction". Petitioner had a cherry crop that would supply funds the fore part of July. He returned home and had a crew picking cherries when a man appeared and stated he had been appointed receiver and demanded possession, which Petitioner refused. He appeared again with the United States Marshal who placed him in possession of the real property and also exemptions.

This receiver was appointed on petition of the Leavenworth State Bank, who also furnished him their own attorney, at the expense of the estate. This receiver was also appointed without the deposit of a bond for costs and damages as is required by law. See Remington's Revised Statutes of Wash., Sec. 725. See Appendix, p. 12, and Federal Rules of Civil Procedure, Rule 65. (Set out at Appendix, p. 11.)

It is submitted that the refusal to refer to the Conciliation Commissioner and the restraint of funds and the placing of a man in charge of real property and exempt property was without jurisdiction.

And that Petitioner is entitled to such redress as may be just and equitable in the premises.

Petitioner Has Been Denied His Constitutional Right, Denied His Liberty and Property Without Due Process of Law

The provisions of the Bankruptcy Act are Statutory. In *Wright* v. *Vinton Branch,* 300 U. S. 440 at p. 456, the Court said:

> "The entry of the Order of Reference initiated proceedings designed to move, through the appointment of appraisers, the appraisal, and the referees order recognizing the debtors right of possession, to the grant of the stay by the Court.
> *Under the Act, no further affirmative action by Petitioner precedent to his obtaining the stay was necessary."*

Borchard v. *Cal. Bank,* 310 U. S. 311 at page 316:

> "The scheme of the Statute is designed to provide an orderly procedure so as to give whatever relief may properly be afforded to the distressed farmer debtor. Instead of prosecuting the cause before the Conciliation Commissioner pursuant to the debtors petition, the Bank resorted to a procedure not contemplated by the Statute, *evidently on the theory that it could obtain some advantage by that course—. The petitioner was entitled to compliance with the procedure required by the Statute.*
>
> The bank, at any time, could have obtained action by the Conciliation Commissioner and the Court, it now cannot maintain that the disorderly and unauthorized procedure followed by the parties is the equivalent of that prescribed by the statute and that as the petitioners have been unable to rehabilitate themselves it is entitled to enforce its lien."

See: *John Hancock* v. *Bartels,* 308 U.S. 180 at p. 187.

The Petitioner herein, on February , 1940, filed under the provisions of Section 75(s): "*no further affirmative action was required*". The creditors, "*at any time, could*

have obtained action by the Conciliation Commissioner and the Court."

Instead of obtaining action by the Conciliation Commissioner and the Court, the creditors "evidently thinking they could obtain some advantage by so doing" resorted to various activities to harass the Petitioner,

Sold the property once and had sale reversed (Sec. 156 Fed. (2) 220); tried several times to get a trustee for the property, interfered with the fruit harvest in 1942, causing a loss of over $10,000.00; and then by fraud and misrepresentation had Petitioner dispossessed and a receiver in possession from July 3, 1943 until May 6, 1946, when the Court of Appeals reversed and the Petitioner came back in possession. Money belonging to the Petitioner was restrained, money restrained and deprived of possession by the secured creditor Robert B. Field, all without a bond for costs and damages.

Petitioner was still carrying on to force the compliance with the statutory provisions which was the duty of Appellees. Finally on June 25, 1947, the creditors complied with the Act and the three-year period in which Petitioner was to pay rent commenced.

A Denial of Certiorari Is Not the Equivalent to an Affirmance

Hamilton Brown Shoe Co. v. *Wolf Bros.*, 240 U. S. 251, at page 258:

> "It is of course, sufficiently evident that the refusal of an application for this extraordinary writ is in no case equivalent to an affirmance of the decree that is sought to be reviewed, and although in this instance the interlocutory decision may have been treated as settling the 'law of the case' so as to furnish the rule for guidance of the referee, the District Court and the Court of Appeals, itself upon the second Appeal, this Court is now reviewing the final decree by virtue of the writ of certiorari, is called upon to notice and rectify

any error that may have occurred in the interlocutory proceedings.

Panama Railroad v. Napier Shipping Co., 166 U. S. 280, 284; U. S. v. Denver & Rio Grande R. R., 191 U. S. 84-93; Lutcher & Moore v. Knight, 217 U. S. 257, 267; Messenger v. Anderson, 225 U. S. 436, 445."

An Appeal Brings Up the Entire Record

Keller v. *Potomac Electric*, 261 U. S. 428, at page 444:

"—We are required to conform to equity procedure, an appeal brings up the whole record and the appellate court is authorized to review the evidence and make such order as the court of first instance ought to have made —."

A Bill of Review Is Called for Only After Final Decree

Simmons v. *Grier Bros.*, 258 U. S. 82, at page 88:

"But a bill of review is called for only after a final decree—one that finally adjudicates upon the entire merits, leaving nothing to be done except the execution of it. If it being only interlocutory, the court at any time before final decree may modify and rescind it."

A Proceeding in Bankruptcy From the Time of Its Commencement Until the Time of Its Close Is But One Suit and a Reexamination Is a Continuation of the Old One

Wiswall v. *Campbell*, 93 U.S. 347, at page 348:

"The principal upon which these decisions rests is that a proceeding in bankruptcy, from its commencement to its close, upon the final settlement of the estate is but one suit. The several motions made and acts done in the bankruptcy court in the progress of the cause are not distinct suits at law or in equity but part of one suit in bankruptcy from which they cannot be separated."

Sandusky v. *L. St. National Bank,* 23 Law Ed. 155:

"A proceeding in bankruptcy from the time of its commencement by the filing of a petition to obtain the benefits of the Act, until the final settlement of the estate of the bankrupt, is but one suit. The District Court for all the purposes of its bankruptcy jurisdiction, is always open. It has no separate terms, *Its* proceedings in any pending suit, therefore at all times open for re-examination upon appropriate application therefor in any appropriate form. Any order made in the progress of the Cause can be subsequently vacated upon proper showing made, provided rights have not become vested under it which will be disturbed by its vacation. Applications for such re-examination may be made by motion or petition according to the circumstances of the case. Such motion or petition will not have the effect of a new suit, but a proceeding in the old one."

Dismissal of Cases Without Hearing Is a Denial to Litigant of "His Day in Court"

Lutcher & Moore v. *Knight,* 217 U.S. 257, at page 267:

". . . Applying this doctrine to the facts and circumstances which we have previously stated, We are of the opinion that it inevitably results that the effects of the action of the Court of Appeals was substantially to deny the Plaintiffs in error in that Court, petitioners here, their day in Court; in other words was equivalent to condemning them without affording them an opportunity to be heard,"

The Federal Courts Must Seek Out and Apply The Laws of the State Where the Court Holds Court

State Laws as Rules of Decision

28 U.S.C.A. Section 1652.

"The laws of the several States, . . . shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."

This Court in *Huddleston* v. *Dwyer*, 322 U.S. 232 at page 236, says:

> "It is the duty of the Federal appellate courts, as well as the trial court, to ascertain and apply the state law where, as in this case, it controls decision."

Erie R.R. v. *Thompkins*, 304 U.S. 64, at page 78:

> 3rd. Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the laws of the State shall be declared by its legislature in a statute or by its highest Court in a decision is not a matter of federal concern.
>
> There is no federal common law."

The General Rule Is That the Mortgagee Is Not Entitled to the Rents and Profits Until He Obtains Possession

In *Freedmans Savings Bank* v. *Shepherd*, 127 U.S. 494, at page 502, Mr. Justice Harlan writing for the Court said:

> "The general rule is that the mortgagee is not entitled to the rents and profits of the mortgaged premises until he takes actual possession, or until possession is taken in his behalf, by a receiver." *Teal* v. *Walker*, 111 U.S. 242; *Grant* v. *Phoenix Life Ins. Co.*, 121 U.S. 105, 117.

The highest Court of the State of Washington has ruled on Section 804 of Remington's Revised Statutes of the State of Washington. See *State of Washington ex rel.* v. *Gardner Gwin et al.*, 170 Wash. 463, citing with approval *Teal* v. *Walker*, 111 U.S. 242. Quoting therefrom (See Appendix, p. 12a):

> "We hold that such stipulation was an agreement to place the mortgagee in possession prior to foreclosure; hence was not enforcible, being a contract in violation of the public policy of the State that a

mortgage was a mere lien and not a conveyance." Annotated 87 A.L.R. 620.

Teal v. *Walker,* 111 U.S. 242, at page 251:

"for if a mortgage is not a conveyance and a mortgagee is not entitled to possession, his claim to the rents is without support."

In the State of Washington it is submitted that Sections 602, 603, 725 and 804 Remington's Revised Code of the State of Washington control decisions. Particularly applicable in this case is Section 804 (see Appendix, p. 12); and although Petitioner has raised the question in both the District Court and the Court of Appeals, both Courts refused to rule upon the matter.

This concerns the income from the property prior to the creditors coming lawfully in possession. This Section supplements the decisions of this Court that the title remains in the farmer-debtor and carries with it the right to enjoy the income, for the purposes of liquidating his debts.

Claim of the Leavenworth State Bank; Petitioner Was Denied a Hearing Before the Conciliation Commissioner (See Tr. 12084 Vol. 7); and the District Judge Refused a Hearing on the "Amount and Legality" (Tr. 12084 Vol. 4 p. 752, Appendix p. 31a).

The Leavenworth State Bank, by its President Robert B. Field, four times presented claims on a mortgage, all in different form, the last time in 1948, when they filed what purported to be a certified copy of a mortgage to the Leavenworth State Bank, but did not attach the note referred to in this purported mortgage and on its face fails to comply with the provisions of the proof required under Section 57 of the Bankruptcy Act and General Orders in Bankruptcy No. 21 set out in Appendix at pages 1 and 7, respectively. The former claims are set

out in Tr. 10391, Vol. 3, pp. 457-60, also at pp. 499-501, and again at Vol. 1, pp. 121-125, and the fourth time in 1948 at Tr. 12216, pp. 37-41 Appendix.

Excerpts from the Statement of Facts in the Supreme Court of the State of Washington are set out herein at Appendix 32a and 33a.

The action of the Conciliation Commissioners is found in Transcript Vol. 7. The action of the District Court thereon is found in Transcript 12084 Vol. 4, at p. 752 (for the convenience of this Court Appendix p. 31a).

The Court of Appeals approved the claims of the Leavenworth State Bank, both the original and supplemental claims presented in 1946.

Gardner v. *New Jersey,* 329 U.S. 573, at page 573:

> "... While valid liens existing at the commencement of bankruptcy have always been preserved, it has long been the function of the Bankruptcy Court to ascertain their validity and extent and to determine the method of their liquidation." *Whitney* v. *Weinman,* 198 U.S. 539; *Hobbs Tie and Timber Co.,* 283 U.S. 734; *Straton* v. *New,* 283 U.S. 318.
>
> "(2) The extent of the lien . . . to what property it applies, and whether it is restricted to realty or covers personal property or revenues as well . . . are also questions for the reorganization Court. See: *Ecker* v. *Western Pacific R. Corp.,* 318 U.S. 448, 466-475."

Neither "The Law of the Case" or "Res Judicata" Apply in Bankruptcy

U. S. v. *U. S. Smelting Co.,* 339 U.S. 186, at page 198:

> "The rule of 'the law of the case' is a rule of practice, ... It is not applicable here because when the case was first remanded nothing was finally decided. The whole

proceedings thereafter were in fieri. The Commission had a right on reconsideration to make a new record, Ford Motor Co. v. Labor Relations Board, 305 U.S. 364, 374-75. When finally decided, all questions were still open and could be presented. The fact that the appeal could have been taken from the first order of the District Court was not because it was a final adjudication but because a bankruptcy injunction had been granted in order to maintain the status quo.

This was an interlocutory order that was appealable because Congress notwithstanding its interlocutory character had made it appealable.

28 U.S.C. Section 1253. Appellants could have appealed but were not bound to do so.

We think that it requires a final judgment to sustain the application of the rule as it does for the kindred rule of res judicata."

Order Denying Delivery of Transcript by the District Court Dated March 3, 1955 (Page 10, Supra)

This Transcript, about 1700 pages in length, was prepared by the District Court in 1952 on its own Motion. The District Court invited Petitioner to file a petition to proceed in forma pauperis, saying the questions presented "were substantial and not frivolous".

Petitioner had the Court Reporter transcribe the part of the record Petitioner thought necessary, at Petitioner's own expense. The District Court denied this and set up a record of its own designation, costing approximately $2,000.00. Petitioner refused to accept this Transcript at the time and made strenuous objections to the Government paying for the same. However the Government did pay for that Transcript. The question arises who is eventually paying for it?

Under 28 U.S.C.A. 1915, the Government only advances the payment. The main need at the time by Petitioner was an attorney which was denied your Petitioner.

The Court says:

"The appeals for which said transcript were prepared have long since been finally disposed of and are not now pending either in the Court of Appeals for the Ninth Circuit, or on petition for writ of certiorari to the Supreme Court of the United States." (supra, p. 10)

A Great Number of the Matters Brought to the Attention of the Court Have Been Dismissed Without Hearing on the Merits

In the footnote at page 7, *supra:*

> "There have also been numerous unreported orders in these. In addition, *the following appeals have been disposed of without opinion or are still pending:* Beecher v. Leavenworth State Bank, Nos. 13316-13326, Same v. Same, 13674; Same v. Smithson, No. 13693; Same v. Same, 13937; Same v. Federal Land Bank, Nos. 14020-14028."

Thus in the foregoing is found a large number of petitions for review that have never been heard on the merits although the District Court specifically certifies that 13316-13326, "are substantial and not frivolous". (Tr. 103316-103326, about p. 1670.)

These are the appeals from Orders of November 30 where the Court of Appeals says (p. 8, *supra*):

> "The Findings of Fact and Conclusions of Law of the Order of November 30, 1951, foreclose any such contention. *It does not appear* that Beecher appealed from that order *and that conclusion of law* is now the law of the case."

These are the appeals that the District Judge said (Tr. 13316-13326) were "substantial and not frivolous" at page 1670, and which later on June 9, 1952, upon petition of Appellees, were dismissed without hearing upon the merits, and further, Petitioner called the attention of the Court of Appeals to the matter and asked that a correction be made.

At page 6, *supra,* footnote 2:

"For a more complete history of the extraordinary and in a large part unwarranted prolongation of this litigation, see ....."

The record will show that this *"unwarranted prolongation of this litigation"* is wholly the responsibility of the Appellees herein. It is "extraordinary" that Petitioner, a poor man not versed in law and denied an attorney, can withstand these rich bankers with unlimited funds at their disposal, and the best lawyers money can buy, for 16 years. Are our courts unable to protect the common citizens of these United States from the use of our courts to permit such persecution?

See Appendix, p. 37, Tr. 14020-14028, p. 229:

SPECIAL APPEARANCE BY FARM DEBTOR REQUESTING BUSINESS AND LEGAL PAPERS.

See Appendix, p. 38a, Tr. 14020-14028, p. 328:

ORDER DENYING "SPECIAL BY FARM DEBTOR REQUESTING BUSINESS AND LEGAL PAPERS."

Date June 5, 1943

SAM M. DRIVER
U. S. District Judge
Filed June 5, 1953

Without Findings Petitioner is unable to determine by what reasoning the Court and Appellees can find for justifying themselves in denying papers of no interest to anybody except Petitioner and of extreme importance to Petitioner.

See Appendix, pp. 35a and 36a: Petitions all denied and of importance in the administration of the Bankruptcy Act.

Then see Appendix, pp. 33a, 34a and 35a: The Order of the District Court ordering the U. S. Marshal to place Homer in possession of personal and exempt property and

make forcible entry if Farm Debtor was not at home. (See p. 34a)

Then see Marshal's return that he found no one at home and made forcible entry by breaking padlocks with bolt cutters. (See p. 34a)

Then see Appendix 12a: Statutes of the State of Washington, Sections 810 and 811, defining Forcible Entry and Detainer, a criminal offense under the Laws of Washington.

The Issues Arising in These Proceedings Have Been Many Times Passed Upon by the Supreme Court. If the Lower Courts Had Recognized These Uniform Decisions These Proceedings Would Have Many Years Ago Terminated

1. The *Vinton Branch* case, 300 U.S. 440, at 456, determined that the Act provided an orderly procedure which must be followed, that when the Farmer Debtor filed his Schedules and amended his petition asking to be adjudged a bankrupt under the provisions of the Act, there were no further affirmative duties required on his part. From there on the responsibility rested upon the creditors to bring things to pass that would start the three-year period. In this case for reasons known only to themselves, they took 7 years in performing their duties; not until June 25, 1947 did the three year period commence.

Borchard v. *Cal. Bank,* 310 U.S. 311 at 317, this Court ruled that the orderly procedure outlined in the Act was statutory and could not be violated.

John Hancock v. *Bartels,* 308 U.S. 180, emphasizes the orderly procedure that is outlined which must be strictly followed.

Also in *Wright* v. *Union Central,* 311 U.S. 275. All support the Orderly procedure as being statutory.

Nowhere in that orderly procedure is there authority to arbitrarily deprive the farm debtor of funds to operate, no where in that orderly procedure is there provision for the appointment of a receiver. There are other drastic remedies provided for if the farmer debtor does not proceed in good faith. It was five years before any further attempt was made to dispossess your petitioner.

Even September 11, 1946, the secured creditor, the Federal Land Bank of Spokane, Tr. 12084, Vol. 2, p. 372 date of Sept. 9, 1946.

The Federal Land Bank in presenting claim for taxes accruing after the date of filing the petition, July 28, 1939, refers to the claim as being made in accordance with the laws of the State of Washington, saying this: referring to Petitioner *"and is still the owner thereof subject to our certificate."*

They have throughout these proceedings made their claims under the laws of Washington, even when they sold the property in 1945, the sale was made, providing for the one year possession by the farmer debtor plus the time provided by the Bankruptcy Act.

Even In Railroad Receivership It Is the Duty to Apply the Rents and Profits on Redemption

Compton v. *Jessup,* 167 U.S. 1, at page 2:

> ". . . That in event of such sale, and in applying the proceeds thereof, Compton would be entitled to an account of the net earnings of the Ohio division over and above all operating expenses, taxes paid and cash paid, if any, in redemption of receivers Certificate and other expenses properly chargeable against the Ohio division, which net earnings should be deducted from the amount due on the prior mortgages on said division."

The Jurisdictional Rule Is Concisely Stated

The jurisdictional Rule is concisely stated in *Valley* v. *Northern Fire Ins. Co.,* 254 U.S. 348, at p. 351:

"Courts are constituted by authority and they cannot go beyond the power delegated to them, if they act beyond that authority, and certainly in contravention of it, *Their judgments and orders are regarded as nullities, they are not voidable, but simply void, and this even prior to reversal.*"

The Ninth Circuit has said that to obtain action by the Court "Some interested party must in some appropriate manner bring the matter before the Court." See *In re Judith Gap,* 5 Fed. (2) 307.

The Lower Court Dismissed the Appeal in 13693 on Erroneous Findings (See p. 2, supra)

The proof is found in the printed record in the lower Court in 13693. (nine copies in the hands of the Clerk of this Court).

The District Court order was entered on December 4, 1952. (See printed record pp. 66-76); Exceptions thereto by Petitioner (pp. 77-87) was filed December 12, 1952; December 13, 1952, the Judge denied the Exceptions (pp. 87-88); December 15, 1952, Petitioner filed Notice of Appeal (pp. 88-89); December 27, 1952, Petitioner filed designation of record (pp. 89-90); January 2, 1953, designation of record by (trustee) (p. 93 item 31); April 28, 1953, Petitioner filed Points on Appeal (pp. 95-98); December 27, 1952, Petitioner in designation of record (p. 89): "*Will you please prepare and transmit the entire original record . . . .*"

Statement of Points

Rule 75 Rules of Civil Procedure, as follows:

75 (d) If the appellant does not designate for inclusion the complete record and all the proceedings and evidence in the action he shall serve with his designation a concise statement of the points on which he intends to rely on appeal.

The Failure to File a Bond, Except Under Protest

The Rules of Civil Procedure, 73 (e) provide: " . . . After the action is docketed, *application for leave to file a bond may be made only in the appellate Court.*"

A cash bond was tendered in the Court of Appeals, was accepted and is now in the hands of the Clerk of that Court $250.00, as is also cash bonds in 14,167 and 14,224, as permitted by the Judges of that Court, making a total of $750.00 now in the hands of that Court.

Was It Proper for Petitioner to Deposit Under Protest?

Section 75 (s) (4) reads in part as follows:

> "No additional fees or costs of administration or supervision of any kind shall be charged to the farmer debtor when or after he amends his petition or answer, asking to be adjudged a bankrupt under this subsection, but all such additional filing fees or costs of administration shall be charged against the bankrupts estate."

It is submitted that Petitioner was well within his rights in making the deposit under protest, and that all "filing fees and costs of administration or supervision" will in the end be returned to petitioner as a charge against the estate as the law provides.

CONCLUSION

That these long continued erroneous decisions, if allowed, to remain in the record, will have an adverse influence affecting the rights of a large number of our American Citizens who by adverse circumstances may have to avail themselves of our bankruptcy statutes:

Wherefore, Petitioner prays for the careful consideration of these questions of such vital importance in the administration of the Bankruptcy Act which seems to reverse the established principles upon which our Bankruptcy laws are founded.

If not reversed and clarified, it will lead to uncertainty and confusion and endanger our Constitutional reliance on Due Process of Law.

Respectfully submitted,

S. P. Beecher,
Farm Debtor and Petitioner.
Cashmere, Washington.